

Fitness Service License Agreement

This Fitness Service License Agreement (this “Agreement”) is between Apple Inc., having its principal place of business at 1 Apple Park Way, Cupertino, CA 95014, Apple Canada Inc., Apple Distribution International Limited, Apple Pty Limited, Apple Services LATAM LLC, iTunes K.K., and Apple Sentity LLC (as applicable in a given country of the Territory and collectively, “Apple”), and the legal entity associated with the account in Apple’s, or Apple’s Service Provider’s (as defined below), systems through which this Agreement is executed (“Publisher”), and is entered into as of the date on which this Agreement is electronically executed by Publisher (the “Effective Date”).

WHEREAS, Apple and Publisher now wish to enter into this Agreement to authorize Apple to make workout and related content containing Publisher Compositions (as defined below) available via a subscription service.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth herein, Apple and Publisher (each a “Party” and collectively, the “Parties”) hereby agree as follows:

1. Definitions. The following terms shall have the following meanings as used herein:

(a) “Accounting Period” means three (3) consecutive Apple fiscal calendar months (including any applicable partial months) while this Agreement is in effect. For avoidance of doubt, Apple fiscal calendar months are approximately equal to calendar months.

(b) “Annual Account” means a Subscription where the Subscriber acquires twelve (12) months of continuous access to the Service in advance.

(c) “Apple’s Service Provider” means a third party designated by Apple from time to time to handle payment, statement, registration and/or author information matching services hereunder.

(d) “Average Number of Subscribers Per Accounting Period” means, in a given Accounting Period, a number equal to the aggregate number of Subscribers using the Service during such Accounting Period; provided that a Subscriber for only part of an Accounting Period will be counted as a fraction, the numerator of which is the number of days such Subscriber has access to the Service and the denominator of which is the total number of days in such Accounting Period.

(e) “Bundle” means a Subscription offered by Apple or its affiliates, or its or their third party distributors, together with Apple or third party products or services whereby the Subscription is not purchased separately.

(f) “Device” means all hardware devices now known or hereafter devised, including, without limitation, personal computers, telephones, tablets, home audio, video, or audio/video consumer electronic devices (e.g., set-top boxes, internet connected A/V receivers, internet connected televisions, and gaming consoles), and digital player devices.

(g) “Minimum License Fees” means the minimum License Fees (as defined below) per Subscription set forth in Schedule 1 attached hereto (as such Schedule 1 may be supplemented or amended from time to time by Apple in order to add or revise Minimum License Fees for the applicable country of the Territory, upon no less than fourteen (14) days written notice to Publisher (which may be by email or other electronic means provided by Apple or Apple’s Service Provider); provided, however, that if Publisher elects not to accept such supplemented or amended Schedule 1, Publisher may, for the period starting on the date of such notice and continuing for thirty (30) days thereafter, terminate this Agreement by providing five (5) business days written notice of such termination to Apple (email sufficient). The foregoing termination right is without prejudice to Publisher’s right to terminate this Agreement pursuant to Section 8.).

(h) “Monthly Account” means a Subscription where the Subscriber acquires one (1) month of continuous access to the Service in advance.

(i) “Performing Rights Deduction” means, with respect to each country of the Territory, an amount equal to the actual license fees payable by Apple with respect to all necessary (i) rights for Apple to make non-dramatic public performances of Publisher Compositions; and (ii) communication to the public and making available rights in Publisher Compositions (as applicable in each such country, the “Performing Rights”), in each case as required to make the Service available in such country on the terms and conditions set forth herein.

(j) “Play” means each instance where a sound recording embodying a musical composition and included in Workout Content is rendered for listening by way of streaming for (i) any duration, with respect to a sound recording included in Audiovisual Workout Content, and (ii) at least thirty (30) seconds, with respect to a sound recording included in Audio-Only Workout Content.

(k) “Publisher Composition” means a non-dramatic musical composition owned, administered and/or otherwise controlled, in whole or in part, from time to time by Publisher with respect to each country of the Territory, to the extent so controlled.

(l) “Publisher’s Pro Rata Share” means, for each Accounting Period, a fraction, the numerator of which is the total number of Plays of Publisher Compositions via Subscriptions on the Service (with each such Play prorated as appropriate in each case where a Publisher Composition is less than one hundred percent (100%) owned, administered or otherwise controlled by Publisher) and the denominator of which is the total number of Plays of all musical compositions via Subscriptions on the Service.

(m) “Publishing Revenue Share” means fifteen percent (15%).

(n) “Quarterly Fraction” means, for a given Accounting Period, a fraction, the numerator of which is the number of days in said Accounting Period and the denominator of which is the total number of days in the applicable calendar year.

(o) “Security Solution” means a content protection system(s) chosen by Apple (e.g., Fairplay) that is used to protect musical compositions embodied in the music tracks contained in Workout Content.

(p) “Service” means the fitness service owned and operated by or on behalf of Apple providing end users access to unlimited streams and downloads of Workout Content on a subscription basis.

(q) “Service Revenue” means (i) all fees earned from Subscriptions and paid to Apple, or paid by third party billing partners (e.g., carriers) to Apple with respect to Subscriptions, and (ii) any other gross monies paid to Apple in connection with the operation and/or exploitation of the Service (e.g., e-commerce bounties, click-through royalties, or referral or affiliate program fees paid to Apple), in each case excluding taxes and refunds. Service Revenue shall be allocated with respect to Bundles in a manner applied consistently across all music publishers for the Service.

(r) “Subscriber” means an end user that accesses the Service for a fee. All end users of a single Subscription (e.g., the master subscriber and all family plan members) together constitute a single Subscriber.

(s) “Subscription” means a subscription to the Service. Subscriptions may be taken up by a user that is the master subscriber and used by such master subscriber together with up to five (5) additional family plan members.

(t) “Territory” means the world, to the extent Minimum License Fees for a given country are specified in Schedule 1.

(u) “Workout Content” means collectively, audio-only and audiovisual workout and related content that incorporates Publisher Composition(s) (“Audio-Only Workout Content” and “Audiovisual Workout Content”, respectively) made available via Subscriptions to the Service to Subscribers in accordance with this Agreement.

2. Grant of Rights.

(a) Subject to all the terms and conditions herein, Publisher hereby grants to Apple, on a non-exclusive basis during the Term (as defined below) (and thereafter, as applicable in accordance with Section 8(c) below) and in the Territory, all necessary rights (including, without limitation, mechanical (i.e., reproduction and distribution) and synchronization rights and, solely with respect to a given country in the

Territory if Publisher is not registered with a Performing Rights organization with respect to such country, Performing Rights) in all Publisher Compositions required to (i) create and format Workout Content, Clips (as defined below), and Teaser Content (as defined below), (ii) host, serve and distribute such Publisher Compositions, as embodied in Workout Content, Clips, and Teaser Content contained on the Service, to Subscribers, whether by way of streaming or downloading (solely with respect to Workout Content, in accordance with the Content Access Rules set forth in Section 4), and (iii) otherwise make available Workout Content, Clips, and Teaser Content to end users in accordance with this Agreement, in each case in connection with the Service. The foregoing rights shall include the right for Apple to fade in/out, crossfade, overdub, loop, mix, and trim any and all Publisher Compositions embodied in sound recordings as reasonably required to create the content contemplated in this Agreement. During the Term, Publisher shall provide Apple with timely information regarding Publisher Compositions and ownership splits in a format reasonably specified by Apple (e.g., CWR). For avoidance of doubt, except as otherwise set forth above, all Performing Rights shall be licensed by Apple from Performing Rights organizations with respect to the applicable country of the Territory.

(b) The rights and licenses granted hereunder extend to Apple to use in connection with all or any part of the Service as made available on any Devices, whether the Service is distributed through a website or software applications or widgets owned or controlled by Apple or an embedded link, and on any platform (e.g., iOS, OS X, Windows, Android, consumer electronics, and home audio systems). Apple may additionally distribute the Service, branded as such, through third parties; provided that only Apple (or its duly authorized agents) may host and serve Publisher Compositions as embodied in the Workout Content, Clips, and Teaser Content to end users through the Service.

(c) For avoidance of doubt, Apple shall have no obligation to exercise any of the rights or licenses granted to it under this Agreement. Publisher acknowledges that the selection of any Publisher Composition(s) for use in connection with the Service as contemplated herein is in Apple's sole discretion.

3. Additional Features and Offerings of the Service.

(a) *Additional Service Details.* All Workout Content on the Service will have an audio soundtrack that is a mixture of speech and music. Publisher Compositions embodied in Workout Content can only be accessed and played via the Service "in context" (i.e., as part of a workout), and cannot be played on demand on a standalone basis on the Service. The Service will make available for end users to view a playlist of tracks embodying Publisher Compositions featured in Workout Content and on-screen notifications about the tracks playing during Workout Content, but playback of such playlist or such tracks shall not be permitted on a standalone basis in the Service, and shall instead link to playback via Apple's digital music service currently branded as "Apple Music," with a call to action to subscribe for users who are not subscribers to Apple Music.

(b) *Bundles.* Apple may make Subscriptions available on an a la carte basis or as part of a Bundle.

(c) *Trials.* Apple may give end users a period of free access to try the Service (“Trial”); provided that a form of payment is supplied by the end user and the Trial automatically converts to a full Subscription at the expiration of the Trial unless the end user opts out prior to expiration of such Trial. For clarity, end users shall have the same access to the Service during a Trial as a Subscriber does under a full Subscription.

(d) *Clips.* Apple may make available on the Service previews of Workout Content and audiovisual and audio-only instructional guides, trainer biographies, introductions to workout programs and other ancillary content that incorporate Publisher Composition(s) (collectively, “Clips”), in each case of three (3) minutes or less in duration, for free to all end users with a call to non-Subscribers to subscribe in order to promote Subscriptions. Clips may also be uploaded, shared and/or made available via Apple and third-party platforms for the purposes of demonstrating the content available on the Service and otherwise promoting Subscriptions.

(e) *Teaser Content.* Apple may make available on the Service a reasonable number of full audiovisual and audio-only workouts that incorporate Publisher Composition(s) (“Teaser Content”) for free to all end users with a call to non-Subscribers to subscribe in order to promote Subscriptions.

(f) *Comp Accounts.* Apple may make a reasonable number of gratis accounts available for demonstration Devices in Apple and third-party retail stores and also to persons involved in the sale, promotion, development and/or testing of the Service, including, without limitation, workout trainers (“Comp Accounts”).

(g) *Content Protection.* Apple will use the Security Solution, which will be no less protective of Publisher Compositions embodied in tracks contained in Workout Content than any other security solution used by Apple for other musical compositions embodied in tracks contained in Workout Content on the Service.

4. Content Access Rules. Use of Workout Content on the Service will be subject to the following content access rules (“Content Access Rules”), which may be modified in Apple’s reasonable discretion from time to time:

(a) No more than six (6) simultaneous streams of Workout Content will be permitted per Subscription account.

(b) Each end user in a Subscription may download Workout Content on up to ten (10) Devices at a time.

(c) A download of Workout Content shall be available for viewing on the Device onto which it is downloaded until the earlier of: (i) thirty (30) days following such download, or (ii) when such Device first connects to the Internet following the expiration of the Subscription.

5. License Fees. In consideration for the rights and licenses granted by Publisher to Apple hereunder, Apple shall pay license fees (“License Fees”) to Publisher as set forth in this Section 5, calculated separately with respect to Subscriptions registered within each country in the Territory for each Accounting Period. For avoidance of doubt, Apple reserves the right to determine retail prices in its sole discretion.

(a) *License Fee for Monthly Accounts*. Separately with respect to each type of Monthly Account contemplated herein (including Monthly Accounts discounted per Section 5(d)):

(i) Publisher’s Pro Rata Share multiplied by the greater of:

(x) Service Revenue derived from such Monthly Accounts, multiplied by the Publishing Revenue Share; and

(y) the Average Number of Subscribers Per Accounting Period that are Subscribers to the applicable type of Monthly Account, multiplied by the Minimum License Fee for such Monthly Accounts, multiplied by three (3);

minus

(ii) the applicable Performing Rights Deduction.

(b) *License Fee for Annual Accounts*.

(i) Publisher’s Pro Rata Share multiplied by the greater of:

(x) Service Revenue derived from Annual Accounts, multiplied by the Publishing Revenue Share, multiplied by the Quarterly Fraction; and

(y) the Average Number of Subscribers Per Accounting Period that are Subscribers to Annual Accounts, multiplied by the Minimum License Fee for Annual Accounts, multiplied by the Quarterly Fraction;

minus

(ii) the applicable Performing Rights Deduction.

(c) *Trials, Comp Accounts, Clips, Teaser Content*. Notwithstanding the foregoing, no License Fees shall be payable with respect to:

(i) The first month of a Trial, provided that this shall only apply with respect to one (1) Trial per end user per thirty-six (36) month period; provided further that where an end user was previously part of a Subscription or Trial (e.g., as a

family plan member entitled to share such Subscription or Trial account) but did not use the Service during such Subscription or Trial, such end user shall be entitled to a further Trial for which no License Fees shall be payable for the first month;

(ii) Clips, Teaser Content, Comp Accounts or refunded Subscription payments; and

(iii) Any and all Accounting Periods where an end user has a Subscription or a Trial of the Service as part of a Bundle but such end user does not fulfill the requisite Service activation criteria with respect to such Subscription and/or Trial (e.g., such end user does not have an Apple Watch).

(d) *Discounted Minimum License Fees.* Notwithstanding anything to the contrary, the Minimum License Fees may be reduced by up to the applicable “Discount Percentage” for the applicable type of Subscription as follows:

Type of Subscription	Discount Percentage
Monthly Account where the Subscriber also holds an Apple Music individual account or is the master subscriber of an Apple Music family account.	Ten percent (10%), with a corresponding discount also applied to Service Revenue derived from such Monthly Accounts.
Bundle of a Subscription with other services.	(a) Ten percent (10%), if a Subscription is bundled with one (1) other service; (b) Fifteen percent (15%), if a Subscription is bundled with more than one (1) but fewer than four (4) other services; and (c) Thirty percent (30%), if a Subscription is bundled with four (4) or more other services.
Bundle with hardware.	Fifty percent (50%) for up to twenty-four (24) months, or by up to sixty-six percent (66%) for up to three (3) months; provided that the reduction will be reasonably commensurate with the marketing for the Bundle and that reductions over thirty percent (30%) for more than three (3) months require extraordinary commitments (as determined in Apple’s reasonable discretion).
Subscription that is billed and paid via a third party (e.g., wireless carrier, or Google Play)	The lesser of (a) the percentage the applicable third party charges Apple,

(excluding Bundles).	or by such third party's revenue share of the applicable Subscription, and (b) ten percent (10%).
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(e) Publisher hereby acknowledges and agrees that under no circumstances shall Apple be required to pay twice for the same use of the same rights in the same Publisher Composition, nor in any event shall Apple be required to allocate payment for more than one hundred percent (100%) of any given Publisher Composition for any reason. For avoidance of doubt, any Performing Rights royalties arising under this Agreement shall be paid to Performing Rights organizations through which Apple has licensed such Performing Rights with respect to the applicable country of the Territory, except where Publisher is not registered with a Performing Rights organization with respect to such country of the Territory.

6. Payment and Reports.

(a) Apple shall pay License Fees to Publisher in the amount set forth in a statement for the applicable Accounting Period and in accordance with Apple's standard business practices after the end of each Accounting Period during the Term. For avoidance of doubt, License Fees shall constitute Publisher's full consideration hereunder and shall be paid in the currency in which the Minimum License Fees for the Territory are expressed herein. Apple may monitor the Service for fraudulent activity and may, in its reasonable discretion, exclude Plays it reasonably deems to be fraudulent.

(b) Apple may withhold any taxes, duties, charges or levies on payments by Apple to Publisher pursuant to this Agreement as may be required by applicable law, rule or regulation. Apple shall remit any such withheld taxes, duties, charges or levies to the appropriate tax authority. Despite the foregoing, provided Publisher has fully satisfied all requirements to document its eligibility for a lower or zero rate of withholding tax, including, without limitation, providing Apple with a valid Certificate of Residency, Apple shall withhold based on the lower withholding tax rate, or, if applicable, shall not withhold. Upon request, Publisher shall provide Apple with necessary tax documentation to establish its residency and to evidence its qualifications for any reduced rate of withholding tax, including, without limitation, a validly executed U.S. Internal Revenue Service form. In the event that Publisher is liable, under applicable laws, for any sales tax, excise tax, use tax, value added tax, goods and services tax, consumption tax, or equivalent type charges (collectively, "Transaction Taxes") assessed on payments made by Apple to Publisher under this Agreement, Publisher shall bear such Transaction Taxes and shall be responsible for the proper treatment (including, without limitation, payment to the proper tax authority) of such Transaction Taxes, unless expressly stated otherwise in this Agreement.

(c) If and where Publisher resides in Australia, Apple Pty Limited and Publisher agree and acknowledge as follows with respect to the License Fees payable under this Agreement by Apple Pty Limited to Publisher: (i) such License Fees constitute consideration for taxable supplies as defined by the A New Tax System (Goods and

Services Tax) Act 1999, and related Acts and Regulations (the “GST Act”) in Australia; (ii) Apple Pty Limited will remit to Publisher such GST on the License Fees; (iii) Apple Pty Limited may issue Recipient Created Tax Invoices (“RCTIs”) with respect to such taxable supplies by Publisher; (iv) if Apple Pty Limited does issue such RCTIs, Publisher will not issue any tax invoices to Apple Pty Limited with respect to such taxable supplies by Publisher; (v) Apple Pty Limited will notify Publisher if it ceases to satisfy the requirements of the GST Act to issue RCTIs; (vi) at the time any supply is made under this Agreement, each Party is registered under the GST Act and will notify the other Party if it ceases to be so registered; and (vii) if either Party requests evidence of such GST registration or details of the Australian Business Number of the other Party, the other Party will promptly produce such evidence to the requesting Party.

(d) If and where Publisher resides in Japan, iTunes K.K. and Publisher agree and acknowledge as follows with respect to any License Fees payable under this Agreement by iTunes K.K. to Publisher: (i) such License Fees are subject to Japanese consumption tax (“JCT”); (ii) iTunes K.K. will remit to Publisher such JCT on the License Fees; (iii) iTunes K.K. may issue the invoice to itself on behalf of Publisher with respect to the License Fees; and (iv) if no response has been received from Publisher within five (5) working days from the issuance of the invoice by iTunes K.K., it is deemed that Publisher approves the contents of the invoice, including the amount of the License Fees, as disclosed in the invoice.

(e) In the event there is an increase (or decrease) in the VAT/GST rate applicable to the Service in any country of the Territory (each a “VAT/GST Event”), then the Minimum License Fees set forth in this Agreement shall automatically decrease (or increase) in the applicable country of the Territory in proportion to the decrease (or increase) in the Service Revenue received by Apple per Subscription as a result of the VAT/GST Event.

(f) Payments made by Apple to Publisher hereunder shall be by electronic funds transfer, and Publisher shall be responsible for any of Publisher’s bank (or any intermediary bank’s) transaction costs or fees arising from such payment. Publisher shall provide Apple with Publisher’s banking information reasonably necessary to effect payment, and with Publisher’s tax documentation as reasonably requested by Apple. An electronic means may be provided by Apple, or Apple’s Service Provider, to enable Publisher to designate a primary currency for the bank account designated by Publisher for receiving payments (“Designated Currency”). Apple may cause Apple’s bank to convert all payments in any payment currency other than the Designated Currency into the Designated Currency prior to payment to Publisher. Publisher agrees that any resulting currency exchange differentials or fees charged by Apple’s bank may be deducted from the applicable payments.

(g) Apple’s actions and/or responsibilities pursuant to this Section 6 may be performed by Apple’s Service Provider in Apple’s sole discretion, and in each such case a reference to Apple shall be deemed a reference to Apple’s Service Provider.

7. Audit. Apple shall maintain and keep complete and accurate records concerning the amounts payable to Publisher arising from uses of Publisher Compositions authorized hereunder for three (3) years following the month in which they occur. Upon reasonable advance written notice (in no event less than thirty (30) days), for up to three (3) years following each particular monthly period, Publisher, at Publisher's sole expense, may appoint an independent certified public accountant or qualified specialized auditor not then engaged in any audit of Apple or Publisher to audit applicable records of Apple at Apple's principal place of business in the Territory for the sole purpose of verifying the amounts due from Apple to Publisher hereunder. Such audit shall take place during regular business hours, and shall not occur more than once during any twelve (12) month period. The certified public accountant or qualified specialized auditor must sign and deliver to Apple a confidentiality agreement in a form acceptable to Apple that protects Apple's confidential information no less than the terms of this Agreement and no less than Publisher protects its own similar information. Publisher may audit transactions occurring in one monthly period only once, and no audit shall be allowed or conducted for a period spanning less than six (6) months. Publisher shall be deemed to have consented to all reporting provided by Apple hereunder, and said reporting shall be binding upon Publisher and shall not be subject to any objection by Publisher for any reason unless specific objections are provided to Apple in writing within three (3) years of the rendering of the reporting. Publisher agrees that Apple's records contain Confidential Information (as defined below).

8. Term and Termination.

(a) The initial term of this Agreement shall commence on the Effective Date and end two (2) years from the launch of the Service in the Territory, unless sooner terminated pursuant to the terms of this Agreement (the "Initial Term"). This Agreement shall renew automatically for additional periods of thirty (30) days each (each, a "Renewal Term"), unless either Party gives notice of non-renewal to the other Party at least thirty (30) days prior to the expiration of the applicable Initial Term or Renewal Term, or unless sooner terminated pursuant to the terms of this Agreement (the Initial Term and any Renewal Terms, collectively, the "Term").

(b) Either Party shall have the right to terminate this Agreement prior to the expiration of the Term in the event that the other Party (i) becomes insolvent, (ii) files a petition in bankruptcy, (iii) makes an assignment for the benefit of creditors, or (iv) breaches any material representation, obligation or covenant contained herein, unless such breach is cured prospectively, no later than thirty (30) days from the date of receipt of notice of such breach, or if not able to be so cured, then resolved to the other Party's satisfaction, not to be unreasonably withheld.

(c) Sections 1 and 7 through 15 shall remain in full force and effect following the expiration or earlier termination of this Agreement. The expiration or earlier termination of this Agreement pursuant to its terms shall not relieve Apple of its obligation to make any payments with respect to transactions in the periods prior to such expiration or termination. Notwithstanding anything to the contrary, all terms and

conditions of this Agreement shall remain in full force and effect solely with respect to any Workout Content, Clips, or Teaser Content produced by Apple prior to expiration or termination of this Agreement, which such Workout Content, Clips, and Teaser Content Apple shall have the right to use in perpetuity subject to and in accordance with this Agreement (including, without limitation, its License Fees and payment provisions); provided that, following such expiration or termination, in the event Publisher reasonably believes there are rights issues or restrictions with respect to such continued use of Publisher Compositions as embodied in such Workout Content, Clips, or Teaser Content and notifies Apple in writing of such rights issues or restrictions (email sufficient), which such notice will state the title, songwriter, and associated ISRC information with respect to each Publisher Composition (and associated sound recording), Apple shall remove such Publisher Compositions from the applicable Workout Content, Clips, or Teaser Content within a commercially reasonable timeframe following Publisher's written notice. For clarity, Apple shall not have the right to produce any new Workout Content, Clips, or Teaser Content after expiration or termination of this Agreement.

9. Indemnification and Limitation of Liability.

(a) Apple will indemnify and hold harmless, and upon Publisher's request, defend, Publisher and its affiliates and contractors (and their respective directors, officers and employees) from and against any and all losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees and costs) arising out of a claim by a third party by reason of: (i) any use by Apple of Publisher Compositions in breach of this Agreement; or (ii) a breach of any warranty, representation, covenant or obligation of Apple under this Agreement. Apple will reimburse Publisher and its affiliates on demand for any payments actually made in resolution of any liability, settlement or adverse judgment that is subject to indemnification hereunder, provided that Publisher obtains Apple's written consent prior to making such payments, which consent shall not be unreasonably withheld. Publisher shall promptly notify Apple of any such claim, and Apple may assume control of the defense or settlement of such claim. Publisher shall have the right, at its expense, to participate in the defense thereof under Apple's direction.

(b) Publisher will indemnify and hold harmless, and upon Apple's request, defend, Apple and its affiliates and contractors (and their respective directors, officers and employees) from and against any and all losses, liabilities, damages, costs or expenses (including reasonable attorneys' fees and costs) arising out of a claim by a third party, adverse judgment or settlement with consent: (i) by reason of a breach of any warranty, representation, covenant or obligation of Publisher under this Agreement; or (ii) that any use of Publisher Compositions authorized by Publisher hereunder violates or infringes the rights of a third party. Publisher will reimburse Apple and its affiliates on demand for any payments actually made in resolution of any liability, settlement, or adverse judgment that is subject to indemnification hereunder, provided that Apple obtains Publisher's written consent prior to making such payments, which consent shall not be unreasonably withheld. Apple shall promptly notify Publisher of any such claim, and Publisher may assume control of the defense or settlement of such claim. Apple shall

have the right, at its expense, to participate in the defense thereof under Publisher's direction.

(c) EXCEPT PURSUANT TO AN EXPRESS INDEMNITY OBLIGATION, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING LOSS OF PROFITS OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THEIR POSSIBILITY.

(d) NO WARRANTY OR TERM, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO THE CONDITION, QUALITY, DURABILITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE SERVICE, OR ANY ELEMENTS THEREOF, IS GIVEN TO, OR SHOULD BE ASSUMED BY, PUBLISHER, AND ANY SUCH WARRANTIES AND TERMS ARE HEREBY EXCLUDED.

10. Confidentiality. Each Party acknowledges that by reason of this Agreement it may have access to certain information and materials concerning the other Party's business plans, customers, technology and products that are confidential and of substantial value to such Party, which value would be impaired if such information were disclosed to third parties or used for purposes other than as expressly permitted by this Agreement (referred to in this Agreement as "Confidential Information"). Each Party agrees to maintain any and all Confidential Information received from the other Party, in confidence, and agrees not to disclose or otherwise make available such Confidential Information to any third party without the prior written consent of the disclosing Party, and only on an as-needed-basis to employees and other permitted persons such as accountants or attorneys under its control and supervision, or royalty participants, so long as such employees, other permitted persons and participants are bound by non-disclosure terms no less restrictive than the terms of this Agreement, unless required by law, or court or governmental order. Confidential Information shall be deemed to include (a) information marked confidential, if conveyed in writing, and (b) information identified orally as confidential, if conveyed orally. Confidential Information shall not be deemed to include any information which (w) is publicly known at the time of the disclosure, (x) becomes publicly known other than by breach of the terms hereof, (y) becomes known to the receiving Party, without restriction, from a source free of any obligation of confidentiality and without breach hereof, or (z) is independently developed by the receiving Party.

11. Mutual Representations and Warranties. Each Party represents and warrants that it (a) has full authority to enter into this Agreement, and to fully perform its obligations hereunder; (b) owns or controls the necessary rights in order to make the grant of rights, licenses and permissions herein, and that the exercise of such rights, licenses and permissions by the other Party shall not violate or infringe the rights of any third party; (c) has not previously entered into any agreement that will interfere with such Party's performance of its obligations under this Agreement; and (d) shall perform in compliance with any applicable laws, rules and regulations of any governmental authority.

12. Press Release. Any press release or public communication by Publisher regarding this Agreement or the Service must have the prior written approval of Apple.

13. Entire Agreement, Modification, Waiver, Successors, No Third Party Beneficiaries. This Agreement, including any schedules hereto, contains the entire understanding of the Parties relating to the subject matter hereof, and supersedes all previous agreements or arrangements between the Parties relating to the subject matter hereof. This Agreement cannot be changed or modified except by a writing signed by the Parties. A waiver by either Party of any term or condition of this Agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, such determination shall not affect any other provision hereof, and the unenforceable provision shall be replaced by an enforceable provision that most closely meets the commercial intent of the Parties. This Agreement shall be binding on the assigns, heirs, executors, personal representatives, administrators, and successors (whether through merger, operation of law, or otherwise) of the Parties. This Agreement is for the sole benefit of the Parties and their authorized successors and permitted assigns. Nothing herein, express or implied, is intended to or shall confer upon any person or entity, other than the Parties and their authorized successors and permitted assigns, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

14. Notices. Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes: (a) on the delivery date if delivered personally to the Party to whom the same is directed or delivered; (b) one (1) business day after deposit with a commercial overnight carrier, with written verification of receipt; or (c) five (5) business days after the mailing date, whether or not actually received, if sent by certified mail, return receipt requested, postage and charges prepaid, to the address of the Party to whom the same is directed.

15. Governing Law. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of California, without regard to principles of conflict of laws. The Parties agree that any proceeding relating to this Agreement will take place in the state or federal courts of California; and each Party hereby waives the right to object to that choice of law, personal jurisdiction or venue.

Schedule 1

Minimum License Fee Per Subscription

Territory and Currency		Monthly Account Per Month	Annual Account Per Year
1	United States (USD)	\$1.50	\$12.60
2	Canada (CAD)	\$1.95	\$16.37
3	Ireland (Euro)	€1.22	€10.23
4	United Kingdom (GBP)	£1.25	£10.49
5	Australia (AUD)	\$2.04	\$17.17
6	New Zealand (NZD)	\$2.22	\$18.62